ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

DIVISION IV

CA06-805

MARCH 14, 2007

MELISSA REEVES APPELLANT	APPEAL FROM THE PULASKI COUNTY CIRCUIT COURT [NO. JV 2006-11]
V.	HON. WILEY A. BRANTON, JR., JUDGE
ARKANSAS DEPARTMENT OF HEALTH and HUMAN SERVICES APPELLEE	AFFIRMED

Appellant Melissa Reeves appeals the Pulaski County Circuit Court's April 20, 2006, decision finding her children dependent-neglected. Appellant contends that the trial court erred in its initial finding of probable cause that an emergency existed and in finding sufficient evidence that the children were dependent-neglected. We affirm.

Facts

Appellant and her three-year-old son were visiting Gus Bosnick on the morning of December 13, 2005, when appellant left her son with Bosnick to go to the store for donuts.

When she returned, the dwelling was on fire.[1] Bosnick's daughter was burned and hospitalized, but no one else was injured. Upon Bosnick's daughter's hospitalization, the Department of Human Services (DHS) caseworker requested that the child be drug tested. That test was positive for methamphetamine. Based upon that test, DHS required that appellant's son be tested for drugs as well. On December 21, 2005, appellant's son had a negative urine screen, but a hair test was positive for methamphetamine.[2] Appellant's drug screen was negative. DHS received the positive test results on appellant's son on or about January 2, 2006, and both appellant's son and daughter were taken into DHS custody pursuant to an ex parte petition and order filed January 4, 2006.

At the probable-cause hearing held January 11, 2006, the trial court found that an emergency existed and continued custody of the children with DHS. On February 17, 2006, a dependency-neglect hearing was held. The appellant testified that she had an ongoing history of methamphetamine use over the last thirteen years, with daily use during the last three years. Further, she was arrested in November 2005 and charged with possession with intent to deliver. She stated that her son had walked in her room when she was smoking methamphetamine on four occasions, but that she had never purposely had him in a room with her when she was doing drugs. She testified that the last time she had used

[1]Appellant testified that her son stuck a toy sword into a space heater, and when that toy ignited, he threw it onto a bed, which in turn caught flame, causing the entire dwelling to burn.

[2]A hair test reveals the donor's exposure to methamphetamine particles floating in the environment.

methamphetamine was three months prior to the adjudication hearing. She stated that she had met Gus Bosnick two weeks prior to the fire, and that she felt safe leaving her child in his care. The trial court found that the appellant's children were dependent-neglected and continued DHS custody. The adjudication order was filed April 20, 2006, and the appellant filed her timely notice of appeal on April 26, 2006.

Statement of law

In equity matters, such as dependency-neglect cases, the standard of review on appeal is de novo, but we do not reverse the judge's findings unless they are clearly erroneous or clearly against the preponderance of the evidence. *Moiser v. Ark. Dep't of Human Servs*., 95 Ark. App. 32, __ S.W.3d __ (2006). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been committed. *Id*.

Probable cause

Appellant concedes that DHS may take immediate custody of children when "there are clear, reasonable grounds to conclude that the juvenile is in immediate danger and that removal is necessary to prevent serious harm from his or her surroundings." Ark. Code Ann. §9-27-313(c) (Supp. 2005). Appellant contends that it was not reasonable for DHS to immediately take the children from her. She claims that there was no immediate danger because of the lapse of time between the fire and the drug test. Further, she claims that because the fire investigators did not conclude that the fire was caused by a

methamphetamine lab, DHS should not have sought removal of the children. Therefore, appellant argues that the trial court erred in its initial finding of probable cause that an emergency existed.

DHS contends, and we agree, that this court does not have jurisdiction to consider appellant's arguments regarding the trial court's finding of probable cause to place the children in DHS custody on a temporary basis. A probable cause order is, by its nature, temporary and therefore not a final, appealable order. *Dover v. Ark. Dep't of Human Servs*., 62 Ark. App 37, 968 S.W.2d 635 (1998). This court stated in *Johnston v. Arkansas Deptartment of Human Services*, 55 Ark. App. 392, 935 S.W.2d 589 (1996), where the appellant appealed both the probable cause finding and the adjudication order:

> We do not decide the first issue since it is not necessary to the outcome of this appeal. . . Since probable cause hearing orders are not final and appealable, the statutory scheme of the juvenile code adds the safeguard of requiring that an adjudication hearing be held within thirty days of the probable cause hearing. In that way, any errors made in the probable cause hearing, which would not be subject to immediate appeal, are minimized by requiring the full adjudication hearing to follow soon thereafter.

Johnston, 55 Ark. App. at 394, 935 S.W.2d at 590.

Sufficient evidence

Appellant argues that the trial court largely relied on the testimony of Dr. Karen Farst in finding the appellant's children dependent-neglected. Dr. Farst testified about the hair-test results, which reflected that appellant's son had been exposed to either vapors, smoke, particulates or something unknown that is associated with smoking or cooking

methamphetamine. Appellant cites two criminal cases, *Llewellyn v. State*, 4 Ark. App. 326, 630 S.W.2d 555 (1982), and *Goff v. State*, 329 Ark. 513, 953 S.W.2d 38 (1997), wherein the court dealt with expert testimony relating to scientific-laboratory testing. In *Llewellyn*, the evidence was hearsay and not allowed where the drug-laboratory supervisor was testifying about another chemist's findings. The *Goff* court distinguished *Llewellyn*, and held that the evidence was admissible where the expert testifying had supervised the technician that performed the test in question and independently reviewed the test results pursuant to standard operating protocol.

Appellant argues that the instant case resembles *Llewellyn*, making Dr. Farst's testimony related to the hair test inadmissible hearsay because the laboratory analysis was conducted in Illinois, and she did not participate or supervise. Further, she did not give specifics as to the scientific methodology in the hair-test analysis. Finally, she was not involved in the chain of custody of the hair sample.

DHS claims that the trial court's dependency-neglect order can be affirmed without considering the results of the hair follicle tests. In its verbal ruling, the trial court remarked:

> Let's throw out the medical test altogether. Mom, by her own testimony, acknowledged that, on three or four occasions, she was smoking meth in her bedroom and the child came in there and that she had to shoo the child away while she was smoking meth. That alone would be a sufficient finding for me, and I so find that that means she has put the child as [sic] unreasonable risk of harm. You do not smoke meth around a child. I guess, if you want to do it in front of adults and adults want to make their own decisions about illegal activity, well and good. An adult care giver does not have the right to subject their child to meth smoke. Period. On that basis alone, without any testing whatsoever, I could easily find these children dependent-neglected because Mom, at a minimum, put at least one child at risk of harm. By

> inference, it would extend to the other child because I don't believe she had special rules about smoking in her bedroom as to which child would be around, except that one child may have been a little bit less mobile because she was younger.

We hold that the trial court had before it sufficient evidence without the hair test to find the children dependent-neglected; therefore, the trial court's findings are not clearly erroneous. Accordingly, we affirm.

Affirmed.

ROBBINS and GRIFFEN, JJ., agree.